



TENNESSEE REAL ESTATE News-Journal

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10th Annual Education Seminars Well Attended

The Tenth Annual Education Seminars provided at nine Tennessee sites by TREC were attended by almost 1000 licensees. Topics of interest were new laws, new rules and what assistants can and cannot do. Because of the confusion over what duties licensed and unlicensed assistants can perform, the Commission's Policy on Personal Assistants is being repeated in this edition of the *News-Journal*. It appears as a tear-out section at the end of this edition.

Another area of interest brought up by a number of licensee attendees, evolved around what should be included in an office transaction file. Commissioner Percy Wilkins addresses that topic in an article beginning on page 2 of this edition.

The Commissioners and Commission staff members appreciate your support of these educational efforts.

Beware: E&O Coverage Can Be Lost

Active licensees who do not renew timely are operating without a license and without E&O Insurance. Because the majority of licensees complete education requirements and pay all fees on time, the Commission does not

enjoy addressing certain problems. However, there is one major problem that exists when individuals do not timely complete requirements. This problem affects the citizens of Tennessee - the people the Commission is sworn to protect. If a licensee does not renew promptly and timely, the license is not valid and E&O insurance is not in effect during the time from expiration of the license to reinstatement of the license. Even worse, the effective date of coverage most likely will change so that all transactions completed prior to the reinstatement of the license will not be covered by the E&O Insurance. This means no transaction prior to the reinstatement of the license would be covered by E&O Insurance regardless of the number of years the premiums were paid. Furthermore, the agent in this position is liable for attorney and settlement costs that most likely would have been paid by the E&O carrier had that agent renewed the real estate license in a timely fashion.

The Commission encourages all professional real estate practitioners to adhere to the time frames for completing education and paying fees so that licensees are always covered by E&O Insurance and the public is always protected.

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Advertising on the Internet

The Tennessee Real Estate Commission has determined the rules already established for advertising do regulate internet advertising. Rule 1260-2-.12 ADVERTISING states "regardless of its nature and the medium in which it appears" which has been interpreted to include all audio, visual and internet advertising. The Commission is encouraging all licensees to re-read that entire section of rules.

Furthermore, the Commission would like to remind Principal Brokers they are responsible for affiliated brokers' advertisements and requests that Principal Brokers monitor the web pages or internet sites used by their affiliates.

The article concerning the most common complaints has been rescheduled to appear in the Winter Edition of the newsletter.

What's In a File

By: Commissioner Percy Wilkins

All Principal Brokers know that the company records and accounts are subject to examination by TREC. State law requires and expects that the business of a licensee will be operated in a proper and responsible manner and that adequate business and transactional records will be maintained. To meet its obligations, TREC employs staff auditors who conduct examinations.

When an auditor arrives, usually without prior notice, it may be a random inspection or it could be because of a complaint or other information indicating a possible problem. Whatever the reason, the auditor will check licenses, review financial records, examine content and storage of records and will follow any leads which indicate problems with operation of the real estate business. It is hoped that the purely routine inspection will serve the broker by helping prevent problems.

TREC has often been asked to provide lists of the records that it requires and expects to be in the broker files. This question is not easily answered and the answer must be conditional. The Principal Broker Seminar, which is being offered by the Commission staff, does attempt to give general guidelines as to form and content of records. However, once you get beyond the obvious items such as contracts, settlement statements and escrow accounting, it is largely a judgment call.

While all transactions have common characteristics, they have a wide array of different

issues and problems, and the handling of such matters creates documentation which is important to the record of that transaction but non-standard in the general sense. The records retained must be varied based on the nature of the transaction, the problems that were encountered and how they were handled.

A Principal Broker would be expected to see that each file contains those items which are appropriate under the circumstances of that particular transaction. If a document is relevant and important to the definition of the agency relationship, handling of funds of others, the accounting for purchase or sale, compliance with laws such as the Seller Disclosure Law, the resolution of problems encountered or agreements for future acts, it is likely that the auditor would expect it to be in the file.

While the auditor's visit might generate some anxiety, keep in mind that the existence of the audit program is to prevent problems, protect the public interest and protect real estate brokers in general by exposing bad practitioners. One would hope and expect that the result would be to improve general practices and enhance the reputation of brokers with the public.

Finally, if a broker office is the subject of an audit, attitude can make a lot of difference. The visit can be treated as an unwelcome intrusion and the records grudgingly made available as requested; or it may be regarded as an opportunity to have the free assistance of an outside expert in evaluating the system, records and procedures.

The wise Principal Broker will welcome the auditor and ask to be made aware of any problems which need attention. After all, if there are problems, the Principal Broker's need to know is more urgent than that of anyone else.

Advertising Errors Can Cause Problems

By: Sue Kerley, Complaint Processing

There are a number of anonymous complaints that come across my desk relative to advertising, both from the general public and from your peers. Most involve printed advertisements for sale or lease without proper disclosure pursuant to Commission Rule 1260-2-.12. This includes not advertising under the firm name and telephone number; not indicating owner/agent if applicable; directing responses to only a first name, etc.

The following ad for example:

*3BD 11/2 BA, FP, updated
kitchen, 1 acre level lot.
First time owners dream.
Call 000-0000.*

This ad does not indicate that the advertiser is engaged in the real estate business; directs responses to only a telephone number, and does not contain the firm name. The only exemption would be if the agent is the owner and the property is not listed. The requirement would then be to advertise as "owner-agent".

When confronted with the violation, a common defense is "the newspaper left it off". Check your ads when they first come into print. If they differ from what you

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DISCIPLINARY ACTION

OCTOBER 1999

Norma G. Allred

License No. AF266140
Kingston, TN

Agreed Citation: Respondent ran a blind ad for a property.

Penalty: Respondent paid a \$250.00 civil penalty.

Jacquelyn Marsh

License No. AF261496

Lynne Cole

License No. BR209101

Consent Order: Respondents referred complainants to an unlicensed contractor. The contractor failed to fulfill his obligations under the contract and complainants suffered serious monetary damages.

Penalty: Respondents paid a civil penalty of \$2500.00.

Thomas Lynch

LICENSE NO. BR14784

Consent Order: Respondent was assessed a \$3000.00 civil penalty and was required to take a 30 hour real estate law course in January of 1998. Respondent failed to timely pay the civil penalty and failed to timely complete the real estate law course. An audit in late 1998 revealed Mr. Lynch had grossly mismanaged his escrow account and has had another complaint filed against him.

Penalty: Respondent shall downgrade his license to affiliate broker and shall replace himself as Principal Broker no later than October 1, 1999. (*Note: Since the execution of the order, Mr. Lynch has agreed to revocation of his license.*)

NOVEMBER 1999

No Disciplinary Actions

DECEMBER 1999

Stephen D. Ayers

License No. AF264614
Murfreesboro, TN

Agreed Citation: Respondent circulated a "blind" flyer where no firm name or phone number was given.

Penalty: Respondent paid a civil penalty of \$250.00.

Dale Bell

License No. AF256960
Paris, TN

Agreed Citation: Respondent ran a "blind" newspaper ad listing no firm name.

Penalty: Respondent paid a civil penalty of \$250.00.

Gateway Realty, Inc. dba

Rarity Bay Realty
License No. 255113

Agreed Citation: Affiliates of this company were receiving compensation from someone other than the principal broker.

Penalty: Respondent paid a civil penalty of \$500.00

Albert L. Powell

License No. PB 4096

Agreed Citation: Respondent ran a "blind" newspaper ad with no firm name.

Penalty: Respondent paid a civil penalty of \$250.00

Candace Revelette

License No. AF215762
Brentwood, TN

Agreed Citation: Respondent did not timely renew for the past three (3) renewal periods.

Penalty: Respondent paid a civil penalty of \$500.00.

Advertising Errors Can Cause Problems

Continued from Page 2

submitted, correct them immediately, making a note when the incorrect ad was printed, when you corrected it and with whom. Then, if a complaint is received, you will have documentation that it was indeed "the newspaper's fault".

Note also that all advertising, including business cards, is required to use the agent or firm name as it is registered with the Commission (not Betsy for Elizabeth, Bill for William, etc.)

Principal Brokers are responsible for all advertising done by affiliates. Any Agreed Citation issued to affiliates and affiliated brokers for violation of advertising rules requires the Principal Broker's signature acknowledging notice.

Tennessee Real Estate Commission

500 James Robertson Parkway, Suite 180
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"The Tennessee Department of Commerce and Insurance is committed to principles of equal opportunity, equal access, and affirmative action." Contact the EEO Coordinator or ADA Coordinator (615) 741-0480, for TDD (615) 741-7190

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TREC Phone Numbers:

(615) 741-2273 or 1-800-342-4031

Web - www.state.tn.us/commerce/trec

Personnel and Area of Responsibility with
direct phone numbers.

Conell House - (615) 741-7548 Affiliate
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Paula Glover - (615) 741-7549 Continuing
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Chip Medlen - (615) 741-0627 Firm
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Donna Wright - 741-4043 Reinstatements,
Timeshare Projects Registration & Renewal

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